

section 514(g)(2) of MAHRA if the PAE determines that project income under the rent levels established under § 401.410 would be inadequate to meet the costs of operating the project as described in paragraph (b) of this section and that the housing needs of the tenants and the community could not be adequately addressed.

(2) In any fiscal year, the PAE may not request HUD to approve Restructuring Plans with exception rents for more than 20 percent of all units covered by the PRA, except that HUD may approve a waiver of this 20 percent limitation based on the PAE's narrative explanation of special need.

(b) *How are exception rents calculated?* Exception rents must be set at a level sufficient to support the costs of operating the project. The PAE must take into account the cost items listed in section 514(g)(3)(A) through (E) of MAHRA, except that debt service is limited to payment of the second mortgage under § 401.461(a) or a rehabilitation loan included in the Restructuring Plan. The exception rent must not exceed 120 percent of the Fair Market Rent for the market area, except that HUD may approve an exception rent greater than 120 percent of Fair Market Rent, based on a narrative explanation of special need submitted by the PAE, subject to the 5 percent limitation in section 514(g)(2)(A) of MAHRA.

[63 FR 48943, Sept. 11, 1998; 63 FR 71373, Dec. 28, 1998]

§ 401.412 Adjustment of rents with operating cost adjustment factor (OCAF).

(a) *OCAF required for Restructuring Plan.* The Restructuring Plan must provide for annual adjustment of the restructured rents by an OCAF determined by HUD and applied as provided in this section. An OCAF may be positive or negative.

(b) *Application of OCAF.* HUD will apply the OCAF to the previous year's contract rent less the portion of that rent paid for debt service. Paragraph (b) of this section applies to renewals of contracts in subsequent years which receive restructured rents under either section 514(g)(1) or (2) of MAHRA.

§ 401.420 When must the Restructuring Plan require project-based assistance?

(a) *Criteria in MAHRA.* The Restructuring Plan must provide for the section 8 contract to be renewed as project-based assistance, subject to the availability of funds for this purpose, if the PAE determines that one or more of the circumstances described in section 515(c)(1)(A), (B), or (C) of MAHRA exists.

(b) *Meaning of "predominant".* For purposes of section 515(c)(1)(B), project has a predominant number of units occupied by elderly families, disabled families, or elderly and disabled families if at least 50 percent of the units are occupied by these families.

(c) *Tight rental market.* The conditions of section 515(c)(1)(A) are met if the PAE determines that there is a market-wide vacancy rate of 6 percent or less.

§ 401.421 Rental Assistance Assessment Plan.

(a) *Plan required.* For any project not subject to mandatory project-based assistance under § 401.420, the PAE must develop a Rental Assistance Assessment Plan in accordance with section 515(c)(2) of MAHRA to determine whether assistance should be renewed as project-based assistance or whether some or all of the assisted units should be converted to tenant-based assistance.

(b) *Matters to be assessed.* The PAE must consider the cost of providing assistance, comparing the applicable payment standard for tenant-based assistance to the project's adjusted rent levels determined under § 401.410 or § 401.411. In addition, the PAE must consider the other matters listed in section 515(c)(2)(B) of MAHRA to be assessed as part of the Plan, and the applicable Consolidated Plan developed under part 91 of this title.

(c) *Conversion may be phased in.* Any conversion from project-based assistance to tenant-based assistance may occur over a period of not more than 5 years if the PAE decides the transition period is needed for the financial viability of the project.

(d) *Reports to HUD.* The PAE must report to HUD on the matters specified

in section 515(c)(2)(C) of MAHRA at least semi-annually.

§ 401.450 Owner evaluation of physical condition.

(a) *Initial evaluation.* The owner must evaluate the physical condition of the project and provide the following information to the PAE in a form acceptable to the PAE:

(1) All work items required to bring the project to the standard in § 401.452;

(2) The capital repair or replacement items that will be necessary to maintain the long-term physical integrity of the property;

(3) A plan for funding the rehabilitation work included in paragraph (a)(1) of this section, which work must be completed in a timely manner after closing the restructuring transaction, that identifies the source of the required owner contribution of non-project funds; and

(4) An estimate of the initial deposit, if any, and the estimated monthly deposit to the reserve for replacement account for the next 20 years.

(b) *Reconsideration and modification of evaluation.* If the PAE, after its independent review under § 401.451, determines that the owner's evaluation either fails to address specific necessary work items or fails to propose a cost-effective approach to rehabilitation, the owner may modify its evaluation to satisfy the concerns of the PAE.

§ 401.451 PAE Physical Condition Analysis (PCA).

(a) *Review and certification of owner evaluation.* (1) The PAE must independently evaluate the physical condition of the project by means of a PCA. If the PAE finds any immediate threats to health and safety, the owner must complete those work items immediately, or the PAE must evaluate the project's eligibility in accordance with § 401.403(b)(3).

(2) After consultation with the owner and an opportunity for the owner to modify its evaluation performed under § 401.450, the PAE must certify to the accuracy and completeness of the owner's evaluation performed under § 401.450 for each project covered by the PRA or state that the evaluation fails

to address certain items or does not propose a cost effective approach.

(b) *Rejection for inaccurate or incomplete owner evaluation.* If the PAE cannot certify to the accuracy and completeness of the owner's evaluation due to its failure to address specific work items or because it does not propose a cost effective approach, the PAE must notify HUD. If HUD agrees with the PAE's determination, the PAE must notify the owner that the request for a Restructuring Plan is rejected.

(c) *Rejection for lack of cost-effectiveness.* Based on the completed PCA, the PAE must determine whether proceeding with a Restructuring Plan with necessary rehabilitation is more cost-effective in terms of Federal resources than rejecting the Request for a Restructuring Plan under § 401.403(b)(3) and providing tenant-based assistance for displaced tenants under § 401.602. HUD will provide guidance to PAEs for making the cost-effectiveness determination. If the PAE concludes that a request for a Restructuring Plan should be rejected because of lack of cost-effectiveness, it must also consider the effect on tenants and the community and advise HUD of the effect.

(d) *Dispute and appeal of rejection.* The dispute and appeal provisions of subpart F of this part apply to rejections under paragraphs (b) and (c) of this section.

§ 401.452 Property standards for rehabilitation.

The Restructuring Plan must provide for the level of rehabilitation needed to restore the property to the non-luxury standard adequate for the rental market for which the project was originally approved. If the standard has changed over time, the rehabilitation may include improvements to meet current standards. The result of the rehabilitation should be a project that can attract non-subsidized tenants but competes on rent rather than on amenities. When a range of options exists for satisfying the rehabilitation standard or the plan for capital replacement, the PAE must choose the least costly option considering both capital and operating costs and taking into account the remaining useful life of all building